

NADJA DAVIS GAMBLE

IBLA 76-26

Decided December 23, 1975

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment application AA-6597.

Affirmed.

1. Patents of Public Lands: Effect

A patent issued under authority of law vests title in the patentee and removes the land from the jurisdiction of the Interior Department.

2. Alaska: Native Allotments

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

3. Alaska: Native Allotments

A Native who has applied for an allotment within a national forest must show that he personally complied with the law in establishing occupancy and use prior to the effective date of the forest withdrawal and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the forest.

APPEARANCES: Richard Svobodny and Donald E. Clocksin, Esqs., of Alaska Legal Services Corporation, Juneau, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Nadja D. Gamble, 1/ appeals from a May 13, 1975, decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application AA-6597 filed pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. § 270-1 through 270-3 (1970). 2/

According to the Bureau of Indian Affairs Native enrollment list, appellant was born on October 12, 1913. In her application for an allotment, filed November 22, 1971, appellant stated she had occupied the land since 1942. Appellant claims the land was used from 1943 to the present for hunting, trapping and fishing. She said that her husband cleared the land and began to use it in October 1971. One acre of potatoes and assorted vegetables for family use was listed as cultivated. Under improvements, she listed one smokehouse valued at \$200 and a cabin at \$500. She noted that both of these structures were built in 1943 and are still standing, but have not been used since the 1950's.

The decision stated that a portion of the land claimed is situated within U.S. Survey No. 2437 which was patented on September 20, 1944. The lands in lots 7 and 9 of the U.S. Survey No. 3756 were patented on February 3, 1964, and March 9, 1964, respectively. The remainder of the lands applied for lie within the boundaries of the Tongass National Forest. The State Office found that appellant had not used and occupied those lands prior to the forest withdrawal and that the lands are not chiefly valuable for agricultural or grazing purposes.

[1] Regarding the patented lands, a patent issued under the authority of law vests title in the patentee and removes the land from the jurisdiction of this Department. Bryan N. Johnson, 15 IBLA 19 (1974). Appellant's application for such lands was properly rejected.

[2] As to the land in the Tongass National Forest, appellant's attorney moves to incorporate the statement of reasons filed in Deborah Dalton, decided in Louis P. Simpson, 20 IBLA 387 (1975). Appellant's attorney states the issues are identical and

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1/ The affidavit of Samuel G. Johnson states that appellant's name is now Nadja D. Peck.

2/ The Act was repealed by section 18 of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617 (Supp. III, 1973), subject to processing of applications pending in the Department.

the factual circumstances substantially similar. We grant this motion.

The issues herein were resolved in Simpson, supra. In that decision, affirming the rejection of certain Native allotments within the Tongass National Forest, the Board cited 43 CFR 2561.0-8(c) which reads:

Allotments may be made in national forests if founded on occupancy of the land prior to the establishment of the particular forest or if an authorized officer of the Department of Agriculture certifies that the land in the application for allotment is chiefly valuable for agricultural or grazing purposes.

The lands applied for by appellant were withdrawn by Presidential Proclamation on February 16, 1909. According to the Bureau of Indian Affairs Native enrollment list, the applicant was born on October 12, 1913, more than 4 years after the withdrawal. Since appellant was born after the date of the withdrawal, and a letter from the Department of Agriculture 3/ states that the land is not chiefly valuable for agricultural or grazing purposes, appellant does not meet either of the criteria set forth in the regulation.

Further, the Board held in Simpson, supra, that a Native who applied for an allotment must show that he or she personally complied with the law in establishing occupancy and use prior to the effective date of the forest withdrawal, and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the forest. These principles were reaffirmed in Mary Y. Paul, 21 IBLA 223 (1975).

The other arguments of appellant have been reviewed, but do not alter the conclusions herein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joseph W. Goss  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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3/ Regional Forester to State Director, BLM, September 6, 1972.

